This action was brought to recover back such tips. *Held,* in the absence of an agreement, gifts in the way of tips over and above the regular charge for the service performed, given to the employee by the employer's customers, belong to the employee. *Zappas* v. *Roumeliote* (Ia. 1912) 137 N. W. 935.

It is well settled that servants and agents are not allowed to take a profit arising out of the business they are hired to transact. *Boston Deep Sea Fishing & Ice Co.* v. *Ansell,* L. R. 39, Ch. Div. 339; *Jacques* v. *Edgell,* 40 Mo. 76; 26 CYC. 1020, 31 CYC. 1434. In discussing what is meant by profit in the above sense the court in *Aetna Ins. Co.* v. *Church,* 21 Oh. St. 492 says, "But it will be found in that class of cases that the profit arises from a claim that could be enforced either by the principal or the agent against the party from whom it was received." Gratuities which could not legally be demanded by either the master or servant have never been held to be profits, and in several cases the courts have decided that tips belong to the person who receives them. On facts almost identical with those in the principal case it was held that a servant could recover tips, in *Polites* v. *Barlin* (Ky. 1912) 149 S. W. 828. In *M'Rae* v. *M'Beath,* 3 Kerr 446 (N. Brun.) it was held that money given to the servant by the owner of a horse which was led behind the stage on one of its regular trips was a mere gratuity to the servant for his trouble in looking after the horse, and that the master had no right to it. The English Courts have probably gone furthest with regard to the ownership of tips by holding that tips received by a waiter on a restaurant car were part of his earnings and must be taken into consideration in computing the compensation payable to his dependent under the Workmen's Compensation Act 1906; *Penn* v. *Spiers and Pond,* 77 L. J. K. B. 542. In discussing the case the court says, "It is notorious that tips are given to waiters, and employers could not pretend to be ignorant of the custom. They must have known that the deceased would receive, and so far as they were concerned they must be taken to have agreed that he should receive, tips from customers in addition to his cash wages. In short it was an implied term of the contract of employment that these tips should be part of his earnings in his employment and by virtue of his employment." The American Courts do not go as far as this but only hold that tips belong to the servant unless otherwise specified in the contract of employment.

MUNICIPAL CORPORATIONS—VALIDITY OF BOND GIVEN TO MUNICIPALITY CONDITIONAL UPON NON-PERFORMANCE OF AN ACT PROHIBITED BY THE GENERAL LAW.—The general state law prohibited the sale of intoxicating liquors, and made a "near-beer" vendor punishable for "having on hand at his place of business intoxicating liquor." An ordinance of plaintiff required defendant, a near-beer vendor, to execute a bond conditioned "not to violate the state prohibition law." Defendant was fined under the State law for having intoxicating liquor in his possession, and now is held liable on the bond. *City of Albany* v. *Cassel et al.* (Ga. App. 1912) 76 S. E. 105.

This is apparently a novel case. If the act which was thus attempted to be restrained were not one prohibited by general law, it would hardly be disputed that this would be a proper regulation under the public power.

Paducah v. *Jones,* 126 Ky. 809, 104 S. W. 971, *People* v. *Blom,* 120 Mich. 45. But should the fact that the act is punishable by state law make any difference? If a municipality attempts to make penal an act already made such by state law, whether the ordinance will be effectual or not depends upon whether or not the state has given the municipality power to make such ordinance. 2 DILLON MUNIC. CORP. (5th Ed.) § 632; *People* v. *Hanrahan,* 75 Mich. 611; *People* v. *Furman,* 85 Mich. 110, 48 N. W. 169; *City of Spartansburg* v. *Parris,* 85 S. C. 227, 67 S. E. 246. If the grant is not express, courts are divided upon what amounts to a grant of power. Many hold that under a general welfare clause, the city has the power to enact an ordinance upon a subject covered by state law. COOLEY, CONSTITUTIONAL LIMITATIONS, (7th Ed.) 279, *Mobile* v. *Allaire,* 14 Ala. 400; *Town of Avoca* v. *Heller,* 129 Ia. 227; *Ex Parte Simmons,* 115 Pac. 380. Others hold that under a general grant of power, no such authority is given to a municipality. *Ex Parte Sic,* 73 Cal. 142, 14 Pac. 403; *Savannah* v. *Hussey,* 21 Ga. 80; *Thrower* v. *City of Atlanta,* 124 Ga. 1, 52 S. E. 76, 1 L. R. A. (N. S.) 382; *Judy* v. *Lashly,* 50 W. Va. 628, 57 L. R. A. 413, 41 S. E. 197. Georgia holds this doctrine to the extent that an ordinance is impliedly repealed by the subsequent enactment of a statute on the same subject. *Straus* v. *Waycross,* 97 Ga. 475, 25 S. E. 329; *Moran* v. *Atlanta,* 102 Ga. 840, 30 S. E. 298. It was decided in *Campbell* v. *City of Thomasville,* 6 Ga. App. 212, 64 S.E. 815, that an ordinance prohibiting the sale of near-beer to a minor was unenforceable because the same act was prohibited by state law, and *Burch* v. *City of Ocilla,* 62 S. E. 66, held that the right to punish for the sale of intoxicating liquors was reserved to the state. If the municipality could not directly punish the sale of intoxicating liquor or storage of it at a near-beer vendor's place of business it would seem to follow that it could not do so indirectly through a bond for a specified sum exacted to enforce the state law.

PUBLIC OFFICERS—ELIGIBILITY—AT WHAT TIME DETERMINED.—Plaintiff, by writ of prohibition, seeks to prevent the state canvassing board from certifying the nomination of the defendant Black as Governor on the Democratic ticket. At the time of the primary election, at which Black received the highest vote, he was judge of the Superior Court and his term would not expire until January 13, 1913, while the next gubernatorial term commenced January 15, 1913. The constitution provides "Judges of the Superior Court shall be ineligible to any other office than judicial during the term for which they shall be elected." Held, by a divided court that "ineligible" as used by the constitution applied at the time of the election, and one disqualified at that time, even though he might subsequently remove this disqualification, was ineligible to hold any office to which he might be elected. *State ex. rel Reynolds* v. *Howell et al.* (Wash. 1912) 126 Pac. 954.

The question raised is one that has frequently been before the courts and upon which there is a square conflict of authority. In *Taylor* v *Sullivan,* 45 Minn. 309, 47 N. W. 802, 11 L. R. A. 272, 22 Am. St. Rep. 729, the leading case in support of the view taken in the principal case, the court commented, "Eligible is derived from the Latin verb *"eligere"*—to choose or select.....